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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

In re:)
)
BULA DEVELOPMENTS, INC.) Case No. 23-24619-C-11
)
)
Debtor.)
) Adv. Pro. 2025-02008-C
)
NATASHA MORA, CESAR MORA,)
FAIZAL AWADAN, AND SHAINAZ) DCN LRL-2
AWADAN,)
)
Plaintiffs,)
v.)
)
SBS TRUST DEED NETWORK, BLACK)
HORSE CAPITAL INC., FINE)
CAPITAL, DANIEL BENSHIMON, TODD)
BERNSTEIN AS TRUSTEE OF TB TRUST)
DATED MAY 8, 1997, KAREN ALWEIL,)
AND LOVE GMC HOLDINGS, LLC,)
)
Defendants.)
)

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MEMORANDUM ON MOTION TO EXPUNGE LIS PENDENS

The Defendants SBS Trust Deed Network (SBS), Black Horse Capital Inc. and Fine Capital Investments move to expunge the Notice of Pendency of Action (Lis Pendens) ("NOPA"), DOC # 2025-0052319, which was recorded February 25, 2025 and filed March 10, 2025, in this Court in connection with the January 17, 2025, Complaint for Injunctive Relief and to Void Transfer filed by Plaintiffs Natasha Mora, Cesar Mora, Faizal Awadan, and Shainaz Awadan.

Facts

The NOPA was signed by Plaintiff "Faizal Adawan, Pro Se" on February 24, 2025 and notarized the same day.

1 The NOPA was not approved by this judge of the court in
2 which the subject action is pending.

3 The NOPA was recorded with the San Diego County Recorder on
4 February 28, 2025, and on March 10, 2025 was filed and served by
5 Plaintiff Natasha Mora in the U.S. Bankruptcy Court, Eastern
6 District of California, in Adversary Proceeding No. 2025-02008.
7 Dkts 31-32.

8 The NOPA asserts that an action has been commenced and is
9 pending in the U.S. Bankruptcy Court for the Eastern District of
10 California that affects title to real property in San Diego
11 County, described as Lot 86 of Muirlands Crest Unit No. 2, in the
12 City of San Diego, State of California, According to Map Thereof
13 No. 3345, Filed in the office of the County Recorder of San Diego
14 County on December 27, 1955, Assessor's Parcel No. 352-512-03-00,
15 commonly known as 6389 Castejon Drive, La Jolla, CA 92037.

16 The "claimants" are the four Plaintiffs in Adversary
17 Proceeding No. 2025-02008, Natasha Mora, Cesar Mora, Faizal
18 Awadan, and Shainaz Awadan.

19 Defendants SBS Trust Deed Network; Black Horse Capital Inc.;
20 and Fine Capital Investments filed a Motion to Expunge Lis
21 Pendens on March 19, 2025. Dkts 43-45.

22 The Plaintiffs opposed the Motion to Expunge in filings made
23 April 3, 2025. Dkts 97-98.

24 The Defendants contend the NOPA should be expunged because
25 the Plaintiffs have no standing to assert claims made on behalf
26 of the bankruptcy estate, that there is no subject-matter
27 jurisdiction, and, incorporate their Motion to Dismiss Complaint
28 in support of expungement.

1 The subject Adversary Proceeding was dismissed by order
2 entered May 1, 2025, granting Defendants' motion. Dkt 162.

3
4 Title 4.5, California Code of Civil Procedure Controls

5 The controlling statute regarding Notice of Pendency of
6 Action is Title 4.5, California Code of Civil Procedure
7 ("Recording Notice of Certain Actions").

8 The NOPA procedure starts with definitions at § 405.1
9 through § 405.8. The Recordation Service and Filing provisions
10 are § 405.20 through § 405.24. Expungement and Other Relief
11 provisions are § 405.30 through § 405.39.

12 Title 4.5 applies in an action pending in any United States
13 District Court in the same manner as in the courts of the State
14 of California. Cal. Code Civ. P. § 405.5. This Bankruptcy Court
15 is a "unit" of the United States District Court for the Eastern
16 District of California. 28 U.S.C. § 151.

17 The "claimants" are the four aforementioned Plaintiffs in
18 Adversary Proceeding No. 2025-02008. Cal. Code Civ. P. § 405.1.

19 The "claimants" assert causes of action that would, if
20 meritorious, affect title or the right to possession of the
21 subject real property. Cal. Code Civ. P. § 405.4. As will be
22 explained, the causes of action are NOT meritorious.

23
24 NOPA is Invalid for Failure to Obtain Court Approval

25 The NOPA does not comply with § 405.21, which requires that
26 a NOPA, if not signed by an attorney of record (there is no such
27 attorney in this case), must be approved by a judge of the court
28 in which the real property claim is pending. Cal. Code Civ. P.

1 § 405.21 The undersigned judge of the court in which the action
2 is pending did not approve the NOPA.

3 If the San Diego County Recorder actually recorded the NOPA
4 on February 28, 2025, such recording is invalid as having
5 violated the third sentence of § 405.21: "A notice of pendency of
6 action shall not be recorded unless (a) it has been signed by the
7 attorney of record, (b) if it is signed by a party acting in
8 propria persona and approved by a judge as provided in this
9 section, or (c) the action is subject to § 405.6 [eminent
10 domain]." Cal. Code Civ. P. § 405.21.

11 The action is not an eminent domain case subject of § 405.6,
12 there is no attorney of record in this case, the signatory
13 Plaintiff Faizal Adawan signed "pro se" (i.e. in propria
14 persona), but the undersigned judge of the court in which the
15 action was then pending did NOT approve the NOPA.

16 The procedure for expungement is governed by Cal. Code Civ.
17 P. § 405.30. The parties defendant to the action pending in this
18 court have applied for expungement.

19 A claimant must establish by preponderance of evidence the
20 "probable validity" of the real property claim. Cal. Code Civ. P.
21 § 405.32. The court "shall order that the notice be expunged if
22 the court finds that the claimant has not established by a
23 preponderance of the evidence the probable validity of the real
24 property claim. Id.

25 "Probable validity" with respect to a real property claim
26 means that it is more likely than not that the claimant will
27 obtain a judgment on the claim. Cal. Code Civ. P. § 405.3.

1 Claimant has not established "probable validity" of claim

2 The "probable validity" is nil. The Complaint in this action
3 was dismissed by order of this Court entered May 1, 2025. Adv.
4 No. 2025-02008, Dkt 162.

5 The first reason for dismissal was that the Plaintiffs lack
6 standing to assert seven alleged causes of action for which the
7 chapter 11 trustee of Bula Developments, Inc., has exclusive
8 standing. The Plaintiffs' Motion for Derivative Standing was
9 previously denied by this Court.

10 The second stated reason for dismissal was that there is no
11 defect in the foreclosure on account of California Civil Code
12 § 2924m because the Plaintiffs do not qualify as "eligible tenant
13 buyers" and "eligible bidders" under that statute.

14 The third stated reason for the dismissal was that prior
15 final unlawful detainer decisions on the merits by the Superior
16 Court of California, for the County of San Diego, rejecting the
17 Plaintiffs' objections to eviction and lockout rendered the
18 validity of the foreclosure issue preclusive and claim preclusive
19 under California law.

20 Finally, there was no federal subject-matter jurisdiction
21 over the dispute between Plaintiffs and Defendants. The dispute
22 does not "arise under" and does not "arise in" a case under Title
23 11, United States Code. Moreover, it is not "related to" the
24 pending case under Title 11 because the outcome could have no
25 conceivable effect on the Bula Developments, Inc., estate being
26 administered under Title 11. 28 U.S.C. § 1334(b); Celotex Corp.
27 v. Edwards, 514 U.S. 300, 308 (1995); Fietz v. Great W. Savings
28 (In re Fietz), 852 F.2d 455, 457 (9th Cir. 1988).

1 In the now-dismissed action in this court, the Plaintiffs
2 were making an illegitimate bad-faith collateral attack on a
3 final judgment of the state court of competent jurisdiction and,
4 also in bad faith, were attempting to hijack the rights of the
5 bankruptcy trustee in the chapter 11 case of Bula Developments,
6 Inc.

7 In sum, the "claimants" have NOT established by
8 preponderance of evidence the "probable validity" of their real
9 property claim. Cal. Code Civ. P. § 405.32.

10 It follows that the application for expungement embodied in
11 the Motion to Expunge Lis Pendens will be GRANTED in a separate
12 order.

13
14 Attorney's Fees and Costs

15 Attorney's fee and costs are authorized in favor of the
16 prevailing party "unless the court finds that the other party
17 acted with substantial justification or that other circumstances
18 make the imposition of attorney's fees and costs unjust." Cal.
19 Code Civ. P. § 405.38.

20 The NOPA was filed and presented for recording by Plaintiffs
21 acting in bad faith in an illegitimate collateral attack on a
22 final judgment of the California Superior Court, County of San
23 Diego, regarding the legitimacy of a foreclosure, unlawful
24 detainer, and attendant eviction proceedings.

25 The Plaintiffs' opposition to the Motion to Expunge contains
26 multiple false or materially inaccurate statements. For example,
27 it is asserted that the sale was "conducted post-petition,
28 without relief from the automatic stay and without court

1 approval." Plaintiffs' Memorandum at page 4. To the contrary,
2 this judicial officer of the District Court granted relief from
3 the bankruptcy automatic stay and authorized the foreclosure. The
4 Plaintiffs' assertion in this respect is a straightforward
5 sanctionable violation of Federal Rule of Bankruptcy Procedure
6 9011 and borders on contempt. At a minimum, it evidences bad
7 faith.


8 In light of the bad faith of the claimants, this court
9 concludes that the claimants did not act with substantial
10 justification.

11 This court concludes, also in light of the bad faith of the
12 claimants, that no circumstances make the imposition of
13 attorney's fees and costs unjust.

14
15 ***

16 A separate order will be issued ordering expungement of the
17 NOPA and authorizing award of attorney's fees and costs in favor
18 of the Defendants to be established by separate motion.

19
20 Dated: May 07, 2025

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23 _____
United States Bankruptcy Judge